

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon, individually and as representatives of a class of similarly situated persons, and on behalf of the M&T Bank Corporation Retirement Savings Plan,

Plaintiffs,

vs.

M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti, Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon, Newton P.S. Merrill, and John Does 1-20,

Defendants.

Jacqueline Allen, individually and on behalf of herself and all others similarly situated,

Plaintiff,

vs.

M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Robert G. Wilmers, Michael P. Pinto, Mark J. Czarnecki, and John Does 1-40,

Defendants.

Civil Action No.: 1:16-cv-375-FPG



Civil Action No.: 1:16-cv-0704-FPG

**JOINT STIPULATION AND ORDER TO COORDINATE RELATED CASES AND ESTABLISH PRELIMINARY CASE SCHEDULE**

Plaintiffs Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, Russ Dixon and Jacqueline Allen (collectively "Plaintiffs") and Defendants M&T Bank Corporation, Manufacturers and Traders Trust Company, M&T Bank Employee Benefit Plans Committee, Wilmington Trust Investment Advisors, Wilmington Funds Management Corporation, Wilmington Trust Corporation, Janet Coletti, Michele Trolli, Mark Czarnecki, Stephen Braunscheidel, Brian Hickey, Darren King, Kevin Pearson, Michael Spychala, Brent O. Baird, C. Angela Bontempo, Robert T. Brady, T. Jefferson Cunningham III, Gary N. Geisel, John D. Hawks, Jr., Patrick W.E. Hodgson, Richard G. King, Melinda R. Rich, Robert E. Sadler, Jr., Herbert L. Washington, Robert G. Wilmers, Robert J. Bennett, Michael D. Buckley, Jorge Pereira, Colin E. Doherty, Denis J. Salamon and Newton P.S. Merrill ("Defendants," and together with Plaintiffs, collectively the "Parties"), respectfully submit this joint stipulation to coordinate the above-captioned actions and establish a preliminary case schedule. In support of their stipulation, the Parties state as follows:

1. On August 17, 2016, Plaintiffs Sa'ud Habib, Beverly Williams, J. Marlene Smith, Kenneth Sliwinski, and Russ Dixon filed their First Amended Class Action Complaint against M&T Bank Corporation ("M&T" or the "Company") and certain other Defendants in Civil Action No.: 1:16-cv-375-FPG (the *Habib Action*"), alleging that Defendants breached fiduciary duties under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, with respect to the M&T Bank Corporation Retirement Savings Plan (the "Plan"). Defendants' response to the Amended Complaint is currently due on September 16, 2016.

2. On September 1, 2016, Plaintiff Jacqueline Allen filed a related action asserting the same or similar claims against M&T and many of the same Defendants in Civil Action No.: 1:16-cv-0704-FPG (the "*Allen Action*").

3. Because the *Habib* Action and the *Allen* Action are based on the same or similar factual allegations and contain the same or similar causes of action under ERISA against overlapping Defendants, Plaintiffs intend to seek consolidation of the actions pursuant to FED. R. CIV. P. 42(a) for all purposes, including trial.

4. In the meantime, the Parties wish to coordinate the litigation of the actions and set certain preliminary case deadlines (subject to the approval of the Court).

5. Specifically, Plaintiffs propose that by no later than September 30, 2016, they will file a joint motion seeking consolidation of the above-captioned actions, along with any similar actions filed in or transferred to this District in the future. On or before the same date, Plaintiffs will file a motion for appointment of interim class counsel pursuant to FED. R. CIV. P. 23(g)(3).

6. The Parties further propose that, in the event that consolidation of the actions is approved by the Court, Plaintiffs will file a Consolidated Complaint within 30 days of the Court's Order consolidating the actions that will supersede the existing complaints in the *Habib* and *Allen* Actions.

7. The Parties further agree that Defendants need not respond to the amended complaint in the *Habib* Action or the complaint in *Allen* Action because those complaints will be superseded by a Consolidated Complaint if the Court consolidates the two actions.

8. This stipulation is made in good faith and not for any dilatory purpose, and the Parties will not be prejudiced by the granting of this stipulation.

NOW THEREFORE, Plaintiffs and Defendants, through their respective counsel, STIPULATE AND AGREE, subject to the approval of the Court:

1. Defendants do not need to respond to the amended complaint in the *Habib* Action or the complaint in the *Allen* Action because Plaintiffs intend to file a Consolidated Complaint that will supersede their existing complaints if the Court consolidates the two actions;

2. By September 30, 2016, the Plaintiffs shall file their motion for consolidation, and Plaintiffs shall file their motion for appointment of interim lead counsel by the same date; and

3. In the event that consolidation of the actions is granted by the Court, Plaintiffs shall file a Consolidated Complaint within 30 days of the Court's Order consolidating the actions.

4. Defendants shall have 45 days from the filing of the Consolidated Complaint to answer, move to dismiss or otherwise respond to the Consolidated Complaint. If Defendants move to dismiss the Consolidated Complaint, Plaintiffs shall have 45 days to file a response to that motion, and Defendants shall have 30 days to file a reply.

Dated: September 13, 2016

Respectfully submitted,

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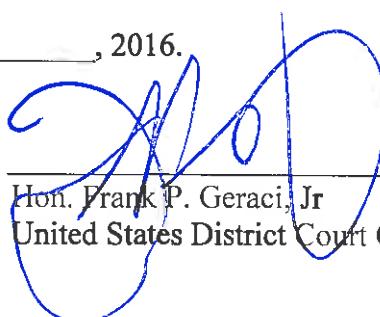
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*Counsel for Plaintiff Jacqueline Allen*

**IT IS SO ORDERED**

Dated this 13<sup>th</sup> day of Sept, 2016.

  
Hon. Frank P. Geraci, Jr  
United States District Court Chief Judge